

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julia Pagnamenta	Team: Squad #2	CCRB Case #: 202004324	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/27/2020 3:58 PM	Location of Incident: Autumn Avenue between Stanley Avenue and Wortman Avenue	Precinct: 75	18 Mo. SOL 11/27/2021	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 05/29/2020 10:17 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 06/17/2020 12:02 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Alec Solomito	03561	964782	075 PCT
2. POM Joseph Jacobsen	23247	962498	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Bessen	14934	967774	075 PCT
2. POM Christian Calvagna	03153	964956	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Jacobsen	Abuse: Police Officer Joseph Jacobsen stopped § 87(2)(b)	
B.POM Alec Solomito	Abuse: Police Officer Alec Solomito stopped § 87(2)(b)	
C.POM Joseph Jacobsen	Abuse: Police Officer Joseph Jacobsen stopped § 87(2)(b)	
D.POM Alec Solomito	Abuse: Police Officer Alec Solomito stopped § 87(2)(b)	
E.POM Joseph Jacobsen	Abuse: Police Officer Joseph Jacobsen frisked § 87(2)(b)	
F.POM Joseph Jacobsen	Abuse: Police Officer Joseph Jacobsen searched § 87(2)(b)	
G.POM Alec Solomito	Abuse: Police Officer Alec Solomito frisked § 87(2)(b)	
H.POM Joseph Jacobsen	Abuse: Police Officer Joseph Jacobsen searched the vehicle in which § 87(2)(b) was an occupant.	
I.POM Joseph Jacobsen	Abuse: Police Officer Joseph Jacobsen threatened to arrest § 87(2)(b)	
J.POM Joseph Jacobsen	Force: Police Officer Joseph Jacobsen used physical force against § 87(2)(b)	
K.POM Joseph Jacobsen	Abuse: Police Officer Joseph Jacobsen failed to provide § 87(2)(b) with a business card.	

Officer(s)	Allegation	Investigator Recommendation
L.POM Joseph Jacobsen	Abuse: Police Officer Joseph Jacobsen failed to provide § 87(2)(b) with a business card.	
M.POM Alec Solomito	Abuse: Police Officer Alec Solomito failed to provide § 87(2)(b) with a business card.	
N.POM Alec Solomito	Abuse: Police Officer Alec Solomito failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

### Case Summary

On May 29<sup>th</sup>, 2020, § 87(2)(b) filed the following complaint on behalf of himself and a friend whose name he only provided as “§ 87(2)(b)” with Internal Affairs Bureau, generating IAB Log # § 87(2)(b) (**Board Review 01**). IAB referred this case to the CCRB, who received it on June 17<sup>th</sup>, 2020.

On May 27<sup>th</sup>, 2020, at approximately 4:00 p.m., § 87(2)(b) and § 87(2)(b) went to § 87(2)(b) friend § 87(2)(b)'s red van, which was parked on Autumn Avenue between Stanley Avenue and Wortman Avenue in Brooklyn. As § 87(2)(b) was inside the vehicle, Police Officer Joseph Jacobsen, Police Officer Alec Solomito, Police Officer Matthew Bessen, Police Officer Christian Calvagna of the 75<sup>th</sup> Precinct, arrived on scene. Police Officer Jacobsen approached the van and told § 87(2)(b) that the officers had received a call about two Black males trying to break into a red van parked at that location. Police Officer Jacobsen asked § 87(2)(b) to whom the vehicle belonged and if he had permission to use it, and § 87(2)(b) replied that the van belonged to his friend. Police Officer Jacobsen told § 87(2)(b) to get out of the van (**Allegation A, B, C, and D - Abuse of Authority: Stop, § 87(2)(g)**). Police Officer Jacobsen patted § 87(2)(b) waist and legs, and allegedly went into his pockets and retrieved his ID (**Allegation E - Abuse of Authority: Frisk, § 87(2)(g)** (**Allegation F – Abuse of Authority: Search (of person), § 87(2)(g)**). Police Officer Solomito frisked § 87(2)(b) (**Allegation G - Abuse of Authority: Frisk, § 87(2)(g)**).

Police Officer Jacobsen entered the van and searched for the vehicle's registration papers in the glove compartment area (**Allegation H: Abuse of Authority: Vehicle Search, § 87(2)(g)**). After exiting the van, Police Officer Jacobsen told § 87(2)(b) to call the owner to verify that he had permission to use the vehicle. § 87(2)(b) refused to call the owner, and Police Officer Jacobsen asked § 87(2)(b) “Do you want to do it back in the precinct?” (**Allegation I - Abuse of Authority: Threat of Arrest, § 87(2)(g)**). Police Officer Jacobsen allegedly pushed § 87(2)(b) in the chest using his right arm (**Allegation J - Force: Physical Force, § 87(2)(g)**) and told § 87(2)(b) “Sir, just get § 87(2)(b) on the phone before I take you to jail because I really don't want to arrest you” (**within Allegation I**).

Police Officer Solomito obtained § 87(2)(b)'s phone number from a previous police report and called him on the phone. § 87(2)(b) confirmed that § 87(2)(b) had permission to use his vehicle. Police Officer Jacobsen and Police Officer Solomito then left the scene without providing their business cards to § 87(2)(b) and § 87(2)(b) (**Allegation K, L, M, N - Abuse of Authority: Failure to Provide RTKA card, § 87(2)(g)**). § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Body-worn camera (BWC) footage of the incident on Autumn Avenue was obtained from the cameras of Police Officer Jacobsen, Police Officer Solomito, Police Officer Calvagna, and Police Officer Bessen, and is attached in IA #68 (**Board Review 02**) and summarized in IA #69 (**Board Review 03**).

## Findings and Recommendations

**Allegation (A) Police Officer Joseph Jacobsen stopped** § 87(2)(b)

**Allegation (B) Police Officer Alec Solomito stopped** § 87(2)(b)

**Allegation (C) Police Officer Joseph Jacobsen stopped** § 87(2)(b)

**Allegation (D) Police Officer Alec Solomito stopped** § 87(2)(b)

§ 87(2)(b) was interviewed by telephone on June 29<sup>th</sup>, 2020 (**Board Review 04**), and he provided three follow up telephone statements on July 27<sup>th</sup>, 2020 (**Board Review 05-07**), and a fourth follow up telephone statement on July 30<sup>th</sup>, 2020 (**Board Review 08**). Numerous attempts were made to obtain a statement from § 87(2)(b) but contact could not be established. § 87(2)(b) provided a telephone statement on July 27<sup>th</sup>, 2020 (**Board Review 09**). The anonymous female listed on the Event Report as the 911 caller provided a telephone statement on January 5<sup>th</sup>, 2021 (**Board Review 10**). Police Officer Jacobsen was interviewed at the CCRB on January 28<sup>th</sup>, 2020 (**Board Review 11**). Police Officer Solomito was interviewed on February 17<sup>th</sup>, 2020 (**Board Review 12**).

The following facts are undisputed: At approximately 4:00 p.m. on May 27<sup>th</sup>, 2020, § 87(2)(b) and § 87(2)(b) both black males, were in the vicinity of a red van belonging to § 87(2)(b) friend § 87(2)(b) parked on Autumn Avenue. § 87(2)(b) was wearing a blue and red Adidas shirt, and a yellow baseball cap, and § 87(2)(b) was wearing a blue, red, and grey Hilfiger sweatshirt, and a backpack. At the same time, an anonymous female caller called 911 (**Board Review 13**) and reported that two black males in their twenties were breaking into a red van in the vicinity of Autumn Avenue and Wortman Avenue. She described one male as wearing a yellow hat and the other a red and blue jacket and a grey or tan backpack. Approximately one minute later, Police Officer Jacobsen and Police Officer Solomito responded to the location and approached § 87(2)(b) and § 87(2)(b). At that point § 87(2)(b) was sitting inside the van and § 87(2)(b) was standing beside the van. After Police Officer Jacobson inquired about the ownership of the van, § 87(2)(b) informed the officers that the van belonged to a friend. At this point, Police Officer Jacobsen asked § 87(2)(b) to get out of the van.

According to People v. Peterson, 110 A.D.3d 1103 (2013) officers have reasonable suspicion to stop an individual based on the general similarity of the individual's physical characteristics to the description of the offender broadcast in police radio calls, and based on the observation of the individual in close spatial and temporal proximity to the crime (**Board Review 14**).

According to People v. De Bour, 40 N.Y.2d 210 (1976) police officers can stop an individual if there is reasonable suspicion that a particular person has committed, is committing or is about to commit a felony or misdemeanor (**Board Review 15**).

§ 87(2)(g)

**Allegation (E) Police Officer Joseph Jacobsen frisked** § 87(2)(b)

**Allegation (F) Police Officer Joseph Jacobsen searched § 87(2)(b)**

**Allegation (G) Police Officer Alec Solomito frisked § 87(2)(b)**

It is undisputed that after asking § 87(2)(b) to exit the vehicle, Police Officer Jacobsen frisked him, and then Police Officer Solomito frisked § 87(2)(b).

In his initial CCRB interview, § 87(2)(b) stated that Police Officer Jacobsen had patted him down from his head down to his toes at both the front and back of his body without reaching into his pockets, while Police Officer Solomito patted down § 87(2)(b) approximately ten feet away from § 87(2)(b). In a follow up statement, § 87(2)(b) stated that Police Officer Jacobsen entered his two front pants pockets and one of his back pants pockets and retrieved his identification. § 87(2)(b) asked Police Officer Jacobsen if he wanted to see his ID, and Police Officer Jacobson said he did not and put it back in § 87(2)(b) pants pocket.

Police Officer Jacobsen stated that he did not enter any of § 87(2)(b) pockets, but frisked § 87(2)(b) waistband and pockets for weapons to make sure “no one [would get] hurt” and because it was “standard procedure” since the call came over the radio as a 10-32 (Larceny). Police Officer Jacobsen believed § 87(2)(b) was accused of attempting to steal a vehicle, which he described as a violent crime. Because § 87(2)(b) was seated in the vehicle when Police Officer Jacobsen first saw him, he did not have a direct view of § 87(2)(b) waistband. Police Officer Jacobsen wanted to make sure that § 87(2)(b) did not have a crowbar to break into the vehicle or hurt anyone with. Police Officer Jacobsen did not recall seeing any weapons, items, or bulges on § 87(2)(b). § 87(2)(b) did not threaten Police Officer Jacobsen’s safety at any point during their interaction, and there was nothing specific to § 87(2)(b) that led him to believe he was carrying any weapons.

Police Officer Jacobsen’s BWC footage captured most of the interaction with § 87(2)(b) (**Board Review 02**). At runtime 01:27, as Police Officer Jacobsen begins to frisk § 87(2)(b) from his upper waist area to his legs, he asks § 87(2)(b) if he has any weapons on him. § 87(2)(b) replies he does not. Police Officer Jacobsen’s BWC footage shows that he did not enter or retrieve any items from any of § 87(2)(b) pockets.

Police Officer Solomito stated he had frisked § 87(2)(b) for the safety of all the persons present. Police Officer Solomito did not know whether § 87(2)(b) had “anything sharp” on him. Police Officer Solomito did not recall § 87(2)(b) or § 87(2)(b) carrying anything when he first encountered them. Neither § 87(2)(b) nor § 87(2)(b) had ever threatened his safety. Police Officer Solomito did not believe he retrieved anything from § 87(2)(b) and he did not recall entering § 87(2)(b)s pockets. Police Officer Solomito did not recall seeing any bulges or weapons on § 87(2)(b).

Police Officer Bessen’s BWC footage captures Police Officer Solomito frisking § 87(2)(b) at runtime 00:10 (**Board Review 02**). Police Officer Solomito does not appear to enter any of § 87(2)(b)s pockets.

According to People v De Bour 40 N.Y.2d 210 (1976), an officer may frisk an individual when he reasonably suspects that he or she is in danger of physical injury by virtue of the individual being armed (**Board Review 15**).

In People v. Robinson 123 A.D.2d 796 (1986), the court ruled that while officers who were responding to a report of a burglary in progress were justified in stopping an individual in the vicinity who matched the description of one of the perpetrators, the mere nature of the reported crime, even along with the officers’ observations of “ambiguous bulges” on the individual, did not justify a frisk, especially in light of the officer’s admission that he knew he was not in danger

during the incident (**Board Review 16**).

By Police Officer Jacobsen and Police Officer Solomito's own admissions, § 87(2)(b) and § 87(2)(b) did not threaten their safety at any point during the incident. Neither Police Officer Jacobsen nor Police Officer Solomito observed any bulges on either male or observed anything that led them to believe that either male was armed. Furthermore, there was no indication in the 911 call that either of the alleged perpetrators were armed.

§ 87(2)(g)

Police Officer Jacobsen's testimony that he did not search § 87(2)(b) is consistent with his BWC footage, which captures the entirety of § 87(2)(b) frisk (**Board Review 02**) and did not show Police Officer Jacobsen entering or retrieving any items from § 87(2)(b) pockets. § 87(2)(b)

**Allegation (H) Police Officer Joseph Jacobsen searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that after frisking § 87(2)(b) Police Officer Jacobsen entered § 87(2)(b)'s vehicle and searched the front area for the vehicle's registration without § 87(2)(b) consent. At this point, Police Officer Jacobson had become aware that § 87(2)(b) had been in possession of the vehicle's keys.

At runtime 02:04, Police Officer Jacobsen's BWC (**Board Review 02**) shows him asking § 87(2)(b) who the vehicle belongs to before he enters through the open door on the driver's side. Police Officer Jacobsen takes the keys out of the ignition, tosses them onto the dashboard, and searches the front area for approximately 15 seconds before he exits and asks § 87(2)(b) where the title of the vehicle registration is located. The BWC does not clearly capture § 87(2)(b) answer, but Police Officer Jacobsen says, "The glove?" At 02:40, Police Officer Jacobsen re-enters the red van and searches through the glove compartment until he comes across a small blue agenda. § 87(2)(b) is looking at the van from several feet away on the sidewalk. Police Officer Jacobsen says to an officer off camera, "Yeah, it's the key, I'm just looking. He says it's his boy's car, so let's find the registration and make contact with him." Police Officer Jacobsen tells the officer to call or have § 87(2)(b) call the vehicle owner. At 03:43, Police Officer Jacobsen calls out to § 87(2)(b) who is standing on the sidewalk on the other side of the red van, "Is this your phone?" and tells him, "All right, get § 87(2)(b) on the phone. Call him." Police Officer Jacobsen then exits the vehicle and approaches § 87(2)(b)

Police Officer Jacobsen stated that when he arrived on scene, except for the information he received in the radio run, there was no indication that the vehicle had been broken into. Police Officer Jacobsen quickly determined that the two males were "obviously" not breaking in, since the car door was closed, the car window was open, there was no damage to the vehicle, and they had the keys. He, however, wanted to confirm that they had "permission" to use the vehicle. Police Officer Jacobsen entered the vehicle to look for the car's registration and find out who owned it. He did not ask for § 87(2)(b) or § 87(2)(b)'s permission before entering the vehicle, and the two males did not volunteer their consent at any point during the incident. Police Officer Jacobsen searched inside the front part of the vehicle in the glove compartment and center console, but he did not find the

vehicle's registration.

There must be probable cause that a vehicle contains contraband, weapons, or evidence of a crime to justify a warrantless search. People v. Hernandez, 238 A.D.2d 131 (1997) (**Board Review 17**).

NYS Penal Law 160.05 states that a person is guilty of unauthorized use of a vehicle in the third degree when, knowing that he does not have consent of the owner, he takes, operates, exercises control over, rides, in or otherwise uses a vehicle (**Board Review 18**).

While the 911 caller reported that two black males were breaking into a red van, by his own admission, by the time he searched the vehicle, Police Officer Jacobsen had determined that § 87(2)(b) was not breaking into the vehicle. Police Officer Jacobsen stated that at that point his suspicion was that they may have been using the vehicle without the permission of the owner and that he searched the vehicle to find its registration. However, the BWC footage shows that Police Officer Jacobsen entered the vehicle and began his search before even asking § 87(2)(b) about the whereabouts of the registration or asking him about the possibility of calling the vehicle owner.

§ 87(2)(g) . By his own admission, he no longer suspected § 87(2)(b) of breaking into the car and only suspected that he might have been using the vehicle without permission. § 87(2)(g)

**Allegation (I) Police Officer Joseph Jacobsen threatened to arrest** § 87(2)(b)

**Allegation (J) Police Officer Joseph Jacobsen used physical force against** § 87(2)(b)

§ 87(2)(b) stated that after Police Officer Jacobsen searched the vehicle, he refused to comply with Police Officer Jacobsen's request to call the vehicle's owner because he believed he had already provided Police Officer Jacobsen with all the information he needed. Police Officer Jacobsen then allegedly pushed § 87(2)(b) in the chest, and § 87(2)(b) asked him why he had pushed him. Police Officer Jacobsen said § 87(2)(b) was being "rude" and told him that he would take him to the precinct stationhouse.

Police Officer Jacobsen stated that because § 87(2)(b) refused to call the vehicle's owner, he could have handcuffed § 87(2)(b) and taken him to the stationhouse, but he did not want to handle the incident in such a manner. Police Officer Jacobsen believed that at that point he had enough to arrest § 87(2)(b) and to continue the investigation at the precinct stationhouse. Police Officer Jacobsen believed that if the car owner had not picked up the phone, and the officers had not deemed that § 87(2)(b) and § 87(2)(b) had permission to use the vehicle, the officers could have brought them back to the stationhouse for "further investigation" to identify the vehicle's owner and determine whether they were authorized to use the vehicle. Police Officer Jacobsen was not certain that § 87(2)(b) could have been charged with a crime at this point in the incident, but he believed § 87(2)(b) could possibly have been charged with "unauthorized use," a misdemeanor. § 87(2)(b) started walking away as Police Officer Jacobsen was speaking to him, and he "gently guided" § 87(2)(b) back in front of him. Police Officer Jacobsen did not push § 87(2)(b) in the chest at any point during the incident.

In Police Officer Jacobsen's BWC (**Board Review 02**), at runtime 03:43, while searching the van, Police Officer Jacobsen calls out to § 87(2)(b) and tells him to call the van's owner. Police Officer Jacobsen then exits the vehicle and approaches § 87(2)(b) At 03:53, § 87(2)(b)





incident during which § 87(2)(b) alleged that Police Officer Jacobsen pushed him, and shows Police Officer Jacobsen touching § 87(2)(b) left shoulder, as § 87(2)(b) walked backwards towards him, rather than pushing him in the chest, as alleged by § 87(2)(b) § 87(2)(g)

**Allegation (K) Police Officer Joseph Jacobsen failed to provide § 87(2)(b) with a business card.**

**Allegation (L) Police Officer Joseph Jacobsen failed to provide § 87(2)(b) with a business card.**

**Allegation (M) Police Officer Alec Solomito failed to provide § 87(2)(b) with a business card.**

**Allegation (N) Police Officer Alec Solomito failed to provide § 87(2)(b) with a business card.**

It is undisputed that Police Officer Jacobsen and Police Officer Solomito left in their vehicles without providing § 87(2)(b) and § 87(2)(b) with their business cards.

Police Officer Jacobsen stated that he did not provide § 87(2)(b) or § 87(2)(b) with business cards but that if § 87(2)(b) had asked him for a business card, he would have provided him with one.

Police Officer Solomito stated that he did not provide § 87(2)(b) and § 87(2)(b) with business cards and said he “must have forgotten.”

According to NYC Administrative Code 14-174 a business card is to be offered for a law enforcement activity, including stops, frisks, and searches of persons, except in cases when a summons is issued, or an arrest is made (**Board Review 21**).

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

### Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (**Board Review 24**).
- Police Officer Joseph Jacobsen has been a member of service for four years and has been a subject in four other CCRB complaint and ten other allegations, none of which have been substantiated. § 87(2)(g)
- Police Officer Alec Solomito has been a member of service for three years and has been a subject in three other CCRB complaint and twelve other allegations, none of which have been substantiated. § 87(2)(g)

### Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.
- According to the New York City Office of the Comptroller, no Notice of Claim had been filed regarding this incident as of March 5<sup>th</sup>, 2021 (**Board Review 25**).
- § 87(2)(b)

Squad No.: 2

Investigator: Julia Pagnamenta Inv. Pagnamenta 06/03/2021  
Signature Print Title & Name Date

Squad Leader: Alexander Opoku-Agyemang IM Alexander Opoku-Agyemang 6/4/2021  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_

CCRB Case # 202004324

Signature

Print Title & Name

Date